

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ANTONIO VALDES,

Defendant and Appellant.

B294723

(Los Angeles County
Super. Ct. No. TA134222)

THE COURT*

Following a joint trial with two other codefendants, Jose Antonio Valdes (defendant) was convicted of second degree murder (Pen. Code §§ 187, subd. (a), 189, subd. (b)).¹ Defendant was one of three gang members who caravanned into rival gang territory and shot 10 bullets at a rival gang member who was walking down the street. The jury found that the murder was

¹ All further statutory references are to the Penal Code unless otherwise indicated.

committed for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)), and found that a principal in this gang-related crime had discharged a firearm in the commission of the crime (§ 12022.53, subd. (e)). The trial court sentenced defendant to 15 years to life for second degree murder plus 25 years to life for the principal's use of a firearm; the court imposed but stayed a 10-year sentence on the gang enhancement.

Defendant previously appealed this conviction and sentence. We upheld defendant's conviction, but (1) struck the imposed-but-stayed 10-year sentence because a gang enhancement and a firearm enhancement could not both be imposed against defendant where the jury did not find that he *personally* fired a gun (*People v. Brookfield* (2009) 47 Cal.4th 583, 590 (*Brookfield*)), and (2) remanded the case to the trial court to consider whether the firearm enhancement should be stricken pursuant to newly enacted section 12022.53, subdivision (h). (*People v. Murillo* (Mar. 8, 2018, B275684, 2018 Cal.App.Unpub.LEXIS 1539) [nonpub. opn.].) At the hearing on remand, the trial court denied defendant's request to strike the firearm enhancement. We affirm.

Defendant filed a timely appeal, and we appointed counsel to represent him on appeal. Defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 959, raising no issues. We notified defendant on February 25, 2019, that he had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. He did not file any brief or letter.

Having conducted our own examination of the record, we are satisfied that defendant's appellate counsel has fully complied with her responsibilities and that no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110 (*Kelly*); *Wende, supra*, 25 Cal.3d at p. 441.) The trial court did not abuse its discretion in declining to strike the firearm enhancement based on what it said was "no mitigation" in the circumstances of the offense. Further, the absence of a finding by the jury that defendant personally discharged a firearm did not constrain the trial court's exercise of discretion to impose the enhancement against defendant. (§ 12022.53, subd. (e)(1); *Brookfield, supra*, 47 Cal.4th at p. 590.)

Defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the sentence entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *Kelly, supra*, 40 Cal.4th at pp. 123-124.)

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

*ASHMANN-GERST, Acting P.J., CHAVEZ, J., HOFFSTADT, J.